

1 BY MR. SCHMIDT:

2 Q So you referred a few moments ago
3 to -- I forget the phrasing you used, but
4 Versus' desire to keep NHL programming. As
5 NHL has become more successful, that presents
6 challenges for Versus in terms of keeping that
7 program. Do you remember that testimony?

8 A I do.

9 Q And the idea is any time the NHL
10 comes up, Versus could lose that programming,
11 correct?

12 A Each time the contract is renewed
13 they could lose it.

14 Q And if they lose NHL programming,
15 you would expect, from your experience, that
16 a network in Versus' position might be
17 concerned about maintaining their distribution
18 levels with cable companies, correct?

19 A You tied two things together there
20 that I'm not sure that I want to agree with.

21 So --

22 Q Well, let me try to --

1 A -- what is your question? Give me
2 an exact question.

3 Q Sure. You said earlier that the
4 NHL is currently Versus' most valuable
5 programming.

6 A Yes.

7 Q Do programmers get concerned that
8 if they lose their most valuable programming
9 it may impact how broadly they get carried by
10 cable companies?

11 A Again, I didn't study the
12 programming network's decisionmaking. It's
13 not part of what I did. I'm here to speak to
14 distribution side from the cable company and
15 also Mr. Brooks' claims of substantial
16 similarity.

17 Q Let me ask you from a cable
18 perspective, then. Just drawing on your
19 experience, when you were dealing with
20 networks on the cable side, would you
21 reconsider how broadly you carried them or the
22 price you paid them if they lost their most

1 valuable content?

2 A Yes.

3 Q Okay. And so here in this
4 document, this Comcast document, we see Versus
5 citing the U.S. Open as a distribution hedge
6 against Versus failing to renew the NHL,
7 correct?

8 MR. TOSCANO: Your Honor, we would
9 just like to object to all these questions
10 about a document that has really nothing to do
11 with the opinions that Mr. Egan has offered
12 and on topics that he hasn't opined on.

13 JUDGE SIPPEL: That's good. I'm
14 going to sustain that objection.

15 MR. SCHMIDT: Well, just so we're
16 heard on this, Your Honor, and I will --

17 JUDGE SIPPEL: I'll actually hear
18 you first before I do that, yes.

19 MR. SCHMIDT: Appreciate this.
20 This was my last question on this document.
21 I do think it's fair to ask -- the witness has
22 said these are very dissimilar. This suggests

1 that they are actually pretty similar, and
2 that's all -- that's the only reason I'm
3 asking the witness these questions on this
4 document. I'm fine moving on.

5 JUDGE SIPPEL: Do you feel
6 comfortable answering that question or not?

7 THE WITNESS: I don't.

8 MR. SCHMIDT: Why don't I move on.

9 JUDGE SIPPEL: You don't. Okay,
10 let's move on.

11 MR. SCHMIDT: But just so we're
12 clear, the standard whether a witness felt
13 comfortable answering a question -- cross-
14 examination can be pretty short.

15 JUDGE SIPPEL: Okay. All right.

16 BY MR. SCHMIDT:

17 Q Let's look at Exhibit 42, which is
18 in the record.

19 JUDGE SIPPEL: Where are we now?

20 MR. SCHMIDT: Exhibit 42. If I
21 may approach, I'll bring it up.

22 JUDGE SIPPEL: Thank you.

1 MR. SCHMIDT: This one will be
2 very quick.

3 BY MR. SCHMIDT:

4 Q And just a couple questions on
5 this when you -- when you're ready, Mr. Egan.

6 A Sure.

7 MR. TOSCANO: Your Honor, even
8 before the question, I'd just note this
9 document deals with totally a different side
10 of the company than what Mr. Egan has been
11 talking about here. This is all from Jeff
12 Shell's side of the company, and it's not what
13 he has been opining.

14 JUDGE SIPPEL: And Jeff Shell is
15 what, he's on the program side?

16 MR. TOSCANO: He's on -- yes, he's
17 on the programming side.

18 JUDGE SIPPEL: Well, I take it you
19 are objecting to its being used for relevance.

20 MR. TOSCANO: With this witness,
21 yes.

22 MR. SCHMIDT: I'm not sure that's

1 --

2 JUDGE SIPPEL: No, I don't -- I'm
3 not sure it is either.

4 MR. SCHMIDT: -- a legitimate
5 objection.

6 JUDGE SIPPEL: State specifically
7 your objection. With this particular
8 witness --

9 MR. TOSCANO: This document has no
10 relevance to the opinions that he has given,
11 and, therefore, it's -- particularly in the
12 interest of time, but also the interest of
13 relevance, that it is -- we object to this
14 being used with him.

15 MR. SCHMIDT: Your Honor, Mr.
16 Solomon was asked for half an hour about
17 accounting in 2005. We could cite any number
18 of instances where witnesses have been asked
19 questions that one side or the other thinks
20 are not relevant or outside their area. I
21 have two or three questions on this document,
22 and then I plan to move on.

1 JUDGE SIPPEL: I'm sorry, Mr.
2 Toscano. He picked up on -- I mean, I'm the
3 one that said "relevance" first, and I think
4 it's more -- I think it's more than that. I
5 think it's a question of the -- I think I got
6 confused with the terms. He's not qualified
7 to speak in this area, because he hasn't
8 examined anything in this area.

9 I mean, he's not the President of
10 the company. He's not a generalist. He gives
11 an assignment, he gets tasked, he goes and
12 looks what he is told to look at.

13 MR. SCHMIDT: Yes.

14 JUDGE SIPPEL: And then he comes
15 back and gives an opinion on it. I don't
16 think that this is any -- that he would have
17 cognizance of this particular area. I think
18 that's what the objection is.

19 MR. SCHMIDT: I think that is --

20 JUDGE SIPPEL: But you want to
21 start -- you want to try voir dire and see
22 what he knows?

1 MR. TOSCANO: Also, along those
2 same lines, it is beyond the scope of the
3 direct.

4 MR. SCHMIDT: Well, may I ask my
5 question?

6 JUDGE SIPPEL: Well, I'm going to
7 be broad on that.

8 MR. SCHMIDT: Yes. But my point,
9 Your Honor, is simply that he is giving an
10 opinion on these three channels relative to
11 each other. From our point of view, when he
12 says, "Tennis has no applicability to Versus,"
13 it's relevant that Versus was actually trying
14 to secure tennis content.

15 Saying things in his documents
16 like "same demographics, positive
17 demographics, would be a tent pole event" --
18 that's what we're trying to establish. And
19 the fact that Comcast chose not to show their
20 witness these documents, that's their
21 decision. That doesn't preclude us from
22 asking him about these documents when, in our

1 view, they fall within the heartland of his
2 opinions.

3 I have two questions on this.
4 I'm, frankly, surprised we are hearing this
5 objection when we have already gone through
6 these documents. I have two questions on
7 this, and then there is one other document I
8 was going to show him one page of, and that's
9 it on this question, and then I was going to
10 move on.

11 JUDGE SIPPEL: Well, okay. Wait,
12 wait. You've said plenty. That's called the
13 heartland argument, right? Okay. Now, what
14 is it that you are going to ask him about with
15 this document?

16 MR. SCHMIDT: May I ask him or --
17 if I'm going to tell Your Honor, I would
18 rather ask him out of the presence of the jury
19 or just -- or just ask the witness the
20 questions. I just plan to ask him if he knows
21 about the role folks were playing in this,
22 because there was a suggestion that this was

1 just about the programming side.

2 At the top of the document it says
3 Steve Burke, Comcast Cable. Mr. Burke was the
4 President of both the programming and the
5 cable side. At the bottom it says Brian
6 Roberts. Brian Roberts is -- I'm going to get
7 the title wrong, but runs the whole
8 organization.

9 So it answers, frankly, the
10 concern that Mr. Toscano raised that this
11 relates only to programming.

12 MR. TOSCANO: I think to the
13 contrary, it puts a point on the fact that Mr.
14 Egan is here as an expert witness, not as a
15 fact witness, and you will be hearing from
16 fact witnesses next. And to the extent Mr.
17 Schmidt is putting that off by asking expert
18 witnesses about facts which the expert has not
19 even opined on, it seems inappropriate.

20 JUDGE SIPPEL: Well, you know,
21 it's like everything else in these things.
22 It's a mixed bag, and the witness obviously

1 would like to finish up and go. So I'm going
2 to allow one question at a time. You make
3 your objection. I understand the objection.
4 Let's see what the witness says.

5 MR. SCHMIDT: Okay. I'll be very
6 quick.

7 JUDGE SIPPEL: Take one question
8 at a time.

9 BY MR. SCHMIDT:

10 Q This is a document, again,
11 discussing the U.S. Open considerations by
12 Versus that we have been talking about. Is
13 that correct?

14 A Correct.

15 JUDGE SIPPEL: Lay the groundwork
16 again as to who it's from. This is dated July
17 2007. Now, we've been talking about July 2007
18 in several of these documents, that timeframe,
19 is that correct?

20 MR. SCHMIDT: Yes, sir.

21 JUDGE SIPPEL: And there's a
22 reason for that. Now --

1 MR. SCHMIDT: Yes, sir.

2 JUDGE SIPPEL: -- this is going
3 from Burke, is that right?

4 MR. SCHMIDT: Well, I think the
5 best place to start, Your Honor, is actually
6 the bottom one --

7 JUDGE SIPPEL: Oh, yes, that's
8 right.

9 MR. SCHMIDT: -- to Mr. Shell.

10 JUDGE SIPPEL: Okay.

11 BY MR. SCHMIDT:

12 Q Do you know who Mr. Roberts is?

13 A I do.

14 Q Who is Mr. Roberts?

15 A Brian Roberts, CEO of Comcast.

16 Q The cable and the programming
17 side?

18 A At this time, I believe that was
19 correct. I don't really know whether that's
20 still correct with the changed structure.

21 Q Okay. I'm asking about this point
22 in time.

1 A Yes.

2 Q He raises the question of the U.S.
3 Open?

4 A Correct.

5 MR. TOSCANO: Your Honor, there's
6 no foundation that the witness has even seen
7 this document before.

8 JUDGE SIPPEL: I understand that.
9 This has a lot of holes in it. But let's see
10 if we can get the witness off the stand, okay?

11 MR. SCHMIDT: Thank you, Your
12 Honor.

13 JUDGE SIPPEL: Go ahead.

14 MR. SCHMIDT: I'm done with that
15 document.

16 JUDGE SIPPEL: See how easy it
17 was?

18 MR. SCHMIDT: Thank you.

19 JUDGE SIPPEL: Okay. That takes
20 care of that. And -- okay. So what's the
21 next document?

22 MR. SCHMIDT: Last one in this

1 area. Let me see if I can do this without the
2 document.

3 BY MR. SCHMIDT:

4 Q Do you agree with me that tennis
5 is a marquis sport?

6 A Do I agree with you that tennis is
7 a marquis sport?

8 Q Yes.

9 A I don't agree with that statement,
10 no.

11 Q Do you agree that some of the
12 tennis grand slams are marquis sports?

13 A I do agree with that, yes.

14 MR. SCHMIDT: That short circuits
15 the need for that.

16 JUDGE SIPPEL: I've got to use
17 this hunger technique more often.

18 (Laughter.)

19 MR. SCHMIDT: I might have already
20 broken my promise, though.

21 JUDGE SIPPEL: All right. Take
22 your time. Just get it right, and we'll keep

1 moving along.

2 BY MR. SCHMIDT:

3 Q Are you aware that there was ever
4 a time where Versus specifically focused on
5 U.S. -- on tennis rights held by The Tennis
6 Channel?

7 A I think, if I'm not mistaken, that
8 we were just looking at documents to -- oh,
9 no, this was actually for the USA package. So
10 Tennis didn't have it yet.

11 Q Right.

12 A Okay. So, no, I don't think I'm
13 aware of it.

14 Q Would it matter to you if that
15 were a fact?

16 A It really would not. I'm looking
17 at the actions of the Cable Division and their
18 decisions regarding distribution of The Tennis
19 Channel, not the Programming Division.

20 Q Let's look at page 27 of your
21 report, so we're back to Exhibit 77.

22 A I'm sorry. Tell me again what

1 page.

2 Q It's page 27.

3 JUDGE SIPPEL: Is this the
4 witness' testimony?

5 MR. SCHMIDT: Yes, sir.

6 JUDGE SIPPEL: Thank you.

7 MR. SCHMIDT: Yes.

8 JUDGE SIPPEL: And the page is
9 what? What page did you say?

10 MR. SCHMIDT: 27, Your Honor. I'm
11 looking at the --

12 JUDGE SIPPEL: Okay, let's go.

13 MR. SCHMIDT: -- the second table.

14 BY MR. SCHMIDT:

15 Q And your point here is these are
16 events that are tennis events that are
17 available on other channels to Comcast
18 subscribers, correct?

19 A The later rounds of those, yes.

20 Q If we expanded this table out to
21 all grand slam events, many of these would be
22 available only on Tennis Channel.

1 A I don't think that's correct.

2 This is all grand slam events.

3 Q I'm sorry. I mean all portions of
4 the grand slam, not just the semi-finals and
5 the finals.

6 A Oh, early rounds.

7 Q Yes.

8 A Yes, there would be certainly U.S.
9 Open, Australian Open, French Open. There
10 would be some earlier round action. Wimbledon
11 seemed to be some replay matches at night due
12 to a little different circumstance.

13 Q If we did this table for Golf
14 Channel, there would be majors that appeared
15 on Golf Channel on this table, correct?

16 A That's correct. The four majors,
17 correct.

18 Q Golf Channel has no major rights,
19 correct?

20 A Well, they do have major rights.
21 I explained they are there in the Live From
22 series, so they do have major rights.

1 Q The major rights they have are to
2 do interviews and talk shows from the majors,
3 not to actually show the events live.

4 A That's correct. They are not
5 showing the rounds of golf.

6 Q They can't even show them taped,
7 correct?

8 A That's a good question. I think
9 that's correct.

10 Q Okay. Now, the other golf
11 coverage that exists, are you aware that in
12 the substantial majority of cases where golf
13 has rights to prominent tours it shares those
14 with other broadcast networks?

15 A Did you say that the majority of
16 -- can you restate your question, please?

17 Q Sure. Let's take the PGA tour.
18 The PGA tour tends to be the most valuable
19 Golf Channel content, correct?

20 A I think that's generally correct,
21 yes.

22 Q Are you aware that the majority of

1 PGA Tour events on Golf, they don't get them
2 all to themselves, they have to share them
3 with the broadcast networks or with ESPN?

4 A You're speaking of that in -- Golf
5 Channel may air certain rounds, and then a
6 broadcast network may air other rounds, is
7 that --

8 Q Yes, Golf Channel gets the early
9 rounds, the network gets the later rounds.

10 A In some cases, that's correct.

11 Q In the majority of cases.

12 A I didn't count them up, but
13 certainly it's a fact. Notably, they are not
14 replying the same coverage. This is different
15 rounds. Thursday might be on Golf Channel.
16 Friday might be on Golf Channel. Saturday
17 might be Golf Channel in the morning, and then
18 on CBS in the afternoon, different players,
19 not the same coverage.

20 MR. SCHMIDT: Your Honor, may I
21 approach very quickly?

22 JUDGE SIPPEL: Please do.

1 MR. SCHMIDT: I am marking new
2 exhibits, Tennis Channel 196 and 197. 196 is
3 a document that Comcast actually previously
4 produced that we have modified simply by
5 highlighting.

6 JUDGE SIPPEL: Thank you.

7 MR. SCHMIDT: You're welcome, Your
8 Honor.

9 JUDGE SIPPEL: 196 and 197.

10 (Whereupon, the above-referred to
11 documents were marked as Tennis
12 Channel Exhibits Nos. 196 and 197
13 for identification.)

14 MR. SCHMIDT: Yes. These are PGA
15 tour schedules from the Golf Channel website,
16 I believe.

17 JUDGE SIPPEL: And these are in or
18 not in?

19 MR. SCHMIDT: 196 is in in a
20 different form, without the highlighting. 197
21 is not in, sir.

22 JUDGE SIPPEL: Well, let's get

1 them both moved in, then.

2 MR. TOSCANO: Well, 196 is not in
3 yet either

4 MR. SCHMIDT: I would move 196 and
5 197 into evidence.

6 JUDGE SIPPEL: Any objection?

7 MR. TOSCANO: No objection, except
8 that -- conditional upon the unhighlighted
9 version going in as well.

10 JUDGE SIPPEL: Well, the whole
11 document goes in.

12 MR. TOSCANO: Understood. But we
13 also have a Brooks exhibit that is just
14 another version of this that we'd like to make
15 sure gets in as well.

16 JUDGE SIPPEL: Well, when it comes
17 to it, we'll get to it. But --

18 MR. TOSCANO: Okay.

19 JUDGE SIPPEL: -- you have no
20 objection to this coming in?

21 MR. TOSCANO: No objection, Your
22 Honor.

1 JUDGE SIPPEL: Okay. Then, 196 is
2 identified and received as Tennis Channel 196,
3 and 197 is marked and is identified as Tennis
4 Channel Exhibit 197 and is received in
5 evidence. Thanks.

6 (Whereupon, the above-referred to
7 documents, previously marked as
8 Tennis Channel Exhibits Nos. 196
9 and 197 for identification, were
10 admitted into evidence.)

11 BY MR. SCHMIDT:

12 Q My question for you is simply --
13 what we have done is we have taken the PGA
14 tour schedules from 2009 -- that's Exhibit 196
15 -- and 2011 -- that's Exhibit 197. And we
16 have highlighted the ones where Golf Channel
17 shares its rights with some other network. Do
18 you see that?

19 A I do.

20 Q And do you see that the majority
21 of those -- or where it doesn't have the
22 rights at all. I guess there are some

1 instances where it doesn't have the rights at
2 all. Do you agree that the majority of those
3 are either shared or Golf Channel doesn't have
4 the rights at all?

5 A Well, I'm going to have to caveat
6 what I say here and say that I'm going to
7 assume, Your Honor, that their highlighting is
8 correct. On another document it didn't seem
9 to be correct. So with that caveat, I'm going
10 to say that the majority of these tournaments
11 that you have listed here don't seem to be
12 exclusive to Golf Channel.

13 And I will also add that when a
14 golf tournament is shared, what it means is
15 that -- in this instance is that Golf Channel
16 will run it exclusively on Thursday and
17 exclusively on Friday, and perhaps exclusively
18 on Saturday morning. And then, the network
19 will take over and run it exclusively Saturday
20 afternoon and Sunday.

21 So these are the last -- there is
22 only four days to a golf tournament. There's

1 not two weeks of it. So the use of the word
2 "early" here has to be taken in context, and
3 so we are saying that in the example I just
4 gave you ■ percent or more of the rounds that
5 comprise the entire tournament are exclusive
6 on Golf Channel, and there isn't any
7 duplication between it and its broadcast
8 partner. I told you I can be long-winded.

9 Q The games that Golf Channel
10 typically gets on the Thursday and Friday,
11 those are during working hours usually,
12 correct?

13 A The tournaments that they air on
14 Thursday and Friday, some are -- you know, it
15 depends on the events. They've got a European
16 tour and they have PGA tour, as we have seen,
17 and other tours. And the European tour will
18 be early in the morning if they're carrying it
19 live, same day. They may be repeating it
20 later that night. The PGA event would tend to
21 be -- would tend to kick off during working
22 hours, and then finish later.

1 Q I have some schedules that -- I'm
2 trying to move us along here. The schedules
3 I have show the events listed, particularly on
4 Exhibit 197, to be all three to six Thursday,
5 three to six Friday. Is that pretty typical
6 in your view?

7 A I'm sorry. What is three to six?

8 Q The coverage that Golf Channel is
9 airing is from --

10 A Yes.

11 Q -- three to six?

12 A Yes.

13 Q Okay. Is that pretty typical in
14 your experience, in your review?

15 A For the PGA events?

16 Q Yes.

17 A Yes, I would say that's pretty
18 typical.

19 Q Three to six -- and just to be
20 clear, three to six Eastern.

21 A Eastern time.

22 Q So earlier out west.

1 A Correct.

2 Q Okay. And you would agree with me
3 that having daytime sports programming during
4 the workday is less valuable than having prime
5 time sports programming or weekend sports
6 programming?

7 A Again, the caveat is, what is the
8 event? You know, what is the sports
9 programming? But if all things are equal,
10 having live coverage prime time would be more
11 valuable to a viewer than live coverage in the
12 afternoon.

13 Q Okay.

14 A On a weekday.

15 Q You gave some opinions on
16 programming that Versus and Golf and Tennis
17 Channel have on the internet. I'd like to
18 walk through those very quickly. You didn't
19 personally quantify how much Golf programming
20 was on the internet, did you?

21 A I think I did. I did my best to
22 quantify that, yes.